



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

GORDON WAYNE JONES, JR.,  
Plaintiff,

v.

CAROLYN W. COLVIN, ACTING  
COMMISSIONER OF SOCIAL  
SECURITY ADMINISTRATION,  
Defendant.

Case No. ED CV 13-1616 JCG

**MEMORANDUM OPINION AND  
ORDER**

Gordon Wayne Jones, Jr. ("Plaintiff") challenges the Social Security Commissioner's ("Defendant") decision denying his application for disability benefits. Two issues are presented for decision here:

1. Whether the Administrative Law Judge ("ALJ") properly determined Plaintiff's residual functional capacity ("RFC"), (*see* Joint Stip. at 4-11); and
2. Whether the ALJ properly evaluated Plaintiff's credibility. (*See id.* at 24-27).

The Court addresses, and rejects, Plaintiff's contentions below.

1           A.     The ALJ Properly Determined Plaintiff's RFC

2           Plaintiff first argues that the ALJ erred in determining his RFC. (*See Joint*  
3 *Stip.* at 4-11.) Specifically, the ALJ erred by giving "great weight" to the non-  
4 examining medical expert regarding Plaintiff's physical limitations, (*id.* at 4-5;  
5 *Administrative Record* ("AR") at 19), and rejecting the opinions of Plaintiff's  
6 treating physicians regarding his mental limitations. (*See Joint Stip.* at 5-11.) The  
7 Court takes each argument in turn.

8                     I.     The ALJ Properly Relied on the Medical Expert

9           First, Plaintiff argues that the ALJ improperly relied on the opinion of the  
10 medical expert, Dr. John Morse, in finding that Plaintiff was capable of light work.  
11 (*See id.* at 4-5.)

12           "The opinions of non-treating or non-examining physicians may [] serve as  
13 substantial evidence when the opinions are consistent with independent clinical  
14 findings." *Thomas v. Barnhart*, 278 F.3d 948, 957 (9th Cir. 2002). "Although the  
15 contrary opinion of a non-examining medical expert does not alone constitute a  
16 specific, legitimate reason for rejecting a treating or examining physician's opinion,  
17 it may constitute substantial evidence when it is consistent with other independent  
18 evidence in the record." *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001)  
19 (citation omitted).

20           Here, Dr. Morse's opinion constitutes substantial evidence because it is  
21 consistent with independent clinical findings and the record as a whole. As the ALJ  
22 noted, "the evidence repeatedly shows that Plaintiff's various conditions are stable  
23 or well-controlled." (AR at 17-18; 343-44 (describing seizures, diabetes, and sleep  
24 apnea as stable); 338, 370 (showing "unremarkable" brain MRI and "[n]ormal  
25 EEG"); 329-32 (finding hernia stable after surgery); 428, 434 (noting good range of  
26 motion in shoulders and normal right and left shoulder series).) Moreover, Plaintiff  
27 generally received only routine, conservative treatment. (*Id.* at 17-18; 331-35  
28 (taking medication for seizures, painkillers for hernia, and nothing for diabetes);

376 (treating shoulder with “stretching and physical therapy”); 401 (recommending weight loss, avoiding alcohol, and nasal steroid for sleep apnea).)

Notably, Plaintiff does not point to a single medical record that contradicts Dr. Morse’s opinion. (*See generally* Joint Stip.) Indeed, in his portion of the Joint Stipulation, Plaintiff does not discuss *any* evidence relating to his physical impairments. (*Id.*); *see Independent Towers of Washington v. Washington*, 350 F.3d 925, 929 (9th Cir. 2003) (federal courts do not “manufacture arguments for an appellant” or “consider any claims that are not actually argued”). Accordingly, the ALJ properly relied on Dr. Morse’s opinion, which constitutes substantial evidence in this case.

## II. The ALJ Properly Rejected Plaintiff’s Treating Physicians

Second, Plaintiff argues that the ALJ improperly rejected the opinions of his treating physicians, Drs. Harry Schwerdtfeger, Philip Cheu, Donald Schubert, and Onsi Habeeb El-Zayat. (*See* Joint Stip. at 5-11.)

“Although a treating physician’s opinion is generally afforded the greatest weight in disability cases, it is not binding on an ALJ with respect to the existence of an impairment or the ultimate determination of disability.” *Tonapetyan*, 242 F.3d at 1149 (citation omitted); *see Morgan v. Comm’r of Soc. Sec. Admin.*, 169 F.3d 595, 600 (9th Cir. 1999) (“[T]he opinion of the treating physician is not necessarily conclusive as to either a physical condition or the ultimate issue of disability.”).

An ALJ may discount the treating physician’s opinion when it is not supported by objective evidence. *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989); *Sandgathe v. Chater*, 108 F.3d 978, 980 (9th Cir. 1997). “When evidence in the record contradicts the opinion of a treating physician, the ALJ must present ‘specific and legitimate reasons’ for discounting the treating physician’s opinion, supported by substantial evidence.” *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228 (9th Cir. 2009) (quoting *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995)).

1 a. Dr. Schwerdtfeger

2 As to Dr. Schwerdtfeger, the ALJ did *not* reject his opinion. Rather, the ALJ  
 3 summarized and incorporated the relevant portions of Dr. Schwerdtfeger's treatment  
 4 notes. (*See* AR at 18.) The ALJ recounted that Plaintiff presented with depression,  
 5 but had no history of mental illness. (*Id.* at 587.) He was treated with "conservative  
 6 prescription medication . . . which was subsequently noted as being effective." (*Id.*  
 7 at 18.) Indeed, Dr. Schwerdtfeger's records reflect that, as of Plaintiff's third  
 8 appointment, his medications were working effectively. (*Id.* at 589, 591, 595.)  
 9 After two months of treatment, the doctor further noted that Plaintiff "talks more,  
 10 smiles and jokes." (*Id.* at 593.) Moreover, Dr. Schwerdtfeger never gave an  
 11 opinion as to Plaintiff's cognitive limitations or ability to work for the ALJ to reject.  
 12 (*See generally id.* at 584-98.) The ALJ thus properly evaluated Dr. Schwerdtfeger's  
 13 treatment notes.

14 b. Dr. Cheu

15 Next, with regard to Dr. Cheu's statement that Plaintiff is "still unable to  
 16 return to full time employment at this time,"<sup>1/</sup> a treating physician's *non-medical*  
 17 opinion on whether the claimant is disabled "is not entitled to special significance."  
 18 *Boardman v. Astrue*, 286 Fed.Appx. 397, 399 (9th Cir. 2008) (citation omitted). In  
 19 other words, Dr. Cheu's non-medical opinion that Plaintiff is unable to work is not  
 20 binding on the Commissioner. *See* C.F.R. § 404.1527(d)(1) (statements by a  
 21 medical source that you are 'disabled' or 'unable to work' "are not medical  
 22 opinions, [] but are, instead, opinions on issues reserved to the Commissioner").  
 23 Therefore, the ALJ was not required to explicitly detail her reasons for rejecting this  
 24 opinion. *See Nyman v. Heckler*, 779 F.2d 528, 531 (9th Cir. 1985) (because  
 25 "opinions by medical experts regarding the ultimate question of disability are not  
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27 <sup>1/</sup> Plaintiff's *only* allegation of error with regard to Dr. Cheu's opinion is the  
 28 ALJ's rejection of this particular statement. (*See* AR at 6-7.)

1 binding[,] . . . [the Commissioner] was not obliged to explicitly detail his reasons  
2 for rejecting the [treating physician's] opinion.") The ALJ thus properly  
3 disregarded Dr. Cheu's statement.

4 c. Dr. Schubert

5 Next, the ALJ properly rejected the extreme limitations imposed in Dr.  
6 Schubert's "mental residual capacity questionnaire" because "they are not consistent  
7 with the record as a whole." (AR at 19, 618-23); *see Batson v. Comm'r of Soc. Sec.*  
8 *Admin.*, 359 F.3d 1190, 1197 (9th Cir. 2004) ("it was permissible for the ALJ to  
9 give [treating opinion] minimal evidentiary weight, in light of the objective medical  
10 evidence and the opinions and observations of other doctors."). As described  
11 above, Plaintiff's conditions were generally stabilized by conservative prescription  
12 medications. The Court further notes that the questionnaire is inconsistent with Dr.  
13 Schubert's own fourteen lines of treatment notes, wherein he indicates that Plaintiff  
14 was depressed and anxious about money, but that his condition was improving.  
15 (AR at 618.) As such, the ALJ properly rejected Dr. Schubert's opinion.

16 d. Dr. El-Zayat

17 Finally, any error that the ALJ may have committed by failing to address Dr.  
18 El-Zayat's "mental residual capacity questionnaire" was harmless because it was not  
19 supported by any treatment notes. (*See* AR at 625-29); *Batson*, 359 F.3d at 1195  
20 (ALJ properly discounts a treating physician's opinion when it is conclusory, brief,  
21 and unsupported); *Crane v. Shalala*, 76 F.3d 251, 253 (9th Cir. 1996) (ALJ may  
22 reject check-off forms that do not explain the bases for their conclusions); *Burch v.*  
23 *Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005) ("A decision of the ALJ will not be  
24 reversed for errors that are harmless"); *Molina v. Astrue*, 674 F.3d 1104, 1109 (9th  
25 Cir. 2012) (finding errors "harmless where it was clear they did not alter the ALJ's  
26 decision"). Dr. El-Zayat's questionnaire neither contains objective support, nor  
27 provides a medical basis for its findings. (AR at 625-29.) Indeed, the record  
28 contains no treatments records from Dr. El-Zayat whatsoever. (*See generally* AR.)



1 Accordingly, the ALJ committed no error in disregarding this evidence.

2 For the above reasons, the ALJ properly evaluated the opinions of Plaintiff's  
3 treating physicians, and in turn, properly determined Plaintiff's RFC.

4 B. The ALJ Properly Rejected Plaintiff's Credibility

5 Plaintiff also insists that the ALJ improperly evaluated his credibility. (See  
6 Joint Stip. at 20-24.)

7 An ALJ can reject a claimant's subjective complaints by expressing clear and  
8 convincing reasons for doing so. *Benton ex rel. Benton v. Barnhart*, 331 F.3d 1030,  
9 1040 (9th Cir. 2003). "General findings are insufficient; rather, the ALJ must  
10 identify what testimony is not credible and what evidence undermines the  
11 claimant's complaints." *Lester*, 81 F.3d at 834.

12 Here, the ALJ properly discounted Plaintiff's credibility. Three reasons guide  
13 this determination.

14 First, the ALJ properly determined that Plaintiff's daily activities are  
15 inconsistent with his allegation of complete disability. (See AR at 16-17); *Molina v.*  
16 *Astrue*, 674 F.3d 1104, 1113 (9th Cir. 2012) (An "ALJ may discredit a claimant's  
17 testimony when the claimant reports participation in everyday activities indicating  
18 capacities that are transferable to a work setting") (citations omitted). In this case,  
19 Plaintiff admitted daily activities including helping his wife with the housework,  
20 washing dishes, preparing meals, and feeding a pet bird. (See AR at 16-17, 71-73.)  
21 Additionally, Plaintiff watches television, attends weekly church services, and  
22 participates in a Bible study class. (*Id.* at 73.) Such activities undermine Plaintiff's  
23 allegation of total disability.

24 Second, the ALJ properly rejected Plaintiff's credibility because his testimony  
25 was inconsistent with his adult function report. (See *id.* at 16-17); *Thomas v.*  
26 *Barnhart*, 278 F.3d 947, 958-59 (9th Cir. 2002) (specifically listing inconsistent  
27 statements as a valid reason for discrediting a claimant). In his adult function  
28

1 report, Plaintiff claimed that he was unable to do *any* housework. (AR at 167.) To  
2 the contrary, at his hearing, Plaintiff testified that he *does* share in the housework,  
3 including washing dishes, cooking, and feeding a pet bird. (*Id.* at 71-72.)

4 Third, the ALJ properly considered Plaintiff's conservative treatment. (*See*  
5 *id.* at 17-18); *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989) (conservative  
6 treatment can discount the severity of symptoms). Plaintiff's treatment, as described  
7 in depth above, was found to include only pain killers, anti-depressants, physical  
8 therapy, stretching, and weight loss. (*See* AR at 18, 331-35, 376, 401.)

9 Accordingly, the ALJ properly rejected Plaintiff's credibility.

10 Based on the foregoing, **IT IS ORDERED THAT** judgment shall be entered  
11 **AFFIRMING** the decision of the Commissioner denying benefits.

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13 Dated: 6-30-2014  
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17 Hon. Jay C. Gandhi  
18 United States Magistrate Judge  
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